

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

NORTHEAST CONTROLS, INC. and))
ST. PAUL MERCURY INSURANCE))
COMPANY,))
)	Civ. A. No.: 06-412 SLR
Plaintiffs,)	
v.)	
)	
FISHER CONTROLS INTERNATIONAL, LLC,)	
)	
Defendants.)	

**DEFENDANT FISHER CONTROLS INTERNATIONAL, LLC'S
MOTION FOR APPROVAL OF THE FORM OF BOND WITH SURETY**

Defendant Fisher Controls International, LLC ("Fisher") moves the Court for approval of the Supersedeas Bond with surety (the "Bond") in the form submitted herewith as Exhibit A and to stay execution on the judgment during appeal. In support of this motion, Fisher respectfully states:

1. On March 13, 2008 the Court entered a money judgment in favor of Northeast Controls, Inc. and St. Paul Mercury Insurance Company in the amount of \$1,207,833.50 plus prejudgment interest at 9% per annum from June 29, 2006 until March 13, 2008.
2. On January 29, 2008 and March 18, 2008, Fisher filed appeals to the United States Court of Appeals for the Third Circuit, docketed as 08-1357 and 08-1820 (Consolidated).
3. Fisher is a subsidiary of Emerson Electric Co. Emerson is a diversified global manufacturing and technology company with over 135,000 employees and 265 manufacturing locations with \$22 billion in sales in 2007.
4. Defendant sought and obtained the Bond with surety in the amount of \$1,404,277.70, a true and correct copy of which is attached hereto as Exhibit A. The surety for said Bond is Travelers Casualty and Surety Company of America.

5. The Bond amount reflects the judgment entered by the Court with a calculation of prejudgment interest and post-judgment interest. In accordance with Missouri law (Vernon's Mo. Stat. Ann. § 408.20), prejudgment interest was calculated on the judgment amount of \$1,207,833.50 at a rate of 9 percent, from June 29, 2006, to the judgment date of March 13, 2008. Post-judgment interest was calculated at the Federal rate of 1.66% as required by 28 U.S.C. §1961, with total post-judgment interest of \$7,466.80 through the date of the Bond. An additional \$600 was added to the bond amount to cover any costs that might be awarded plaintiffs by the Court of Appeals. These calculations are set forth on Exhibit B (calculation of bond amount).

6. The parties discussed a stipulation to stay execution on the judgment in lieu of a bond. Plaintiffs agreed to forgo a bond, but only if Fisher agreed to relinquish any further appeal rights in the event the judgment is affirmed by the Court of Appeals. Plaintiffs have acknowledged that they have no concerns about Fisher's ability to satisfy this judgment.

7. Counsel for the Plaintiffs reviewed the Bond and recently advised that the Bond is acceptable except that the amount should be increased by 20%. Counsel provided no calculations to support the increased amount. Exhibit C. Further, Plaintiffs' counsel reiterated that his clients agreed no bond was necessary if Defendant would simply agree to forgo further appellate rights.

8. Defendant is able to satisfy the judgment, and the Bond is sufficient to satisfy the judgment plus interest and fees in the event the decision is affirmed.

9. Defendant hereby requests that the Court approve the form and amount of the Bond and enter a stay of execution. Fed. R. Civ. P. 62(d).

Wherefore Defendant Fisher Controls International, LLC respectfully requests the Court enter the order enclosed herewith approving the Bond and surety enclosed herewith as Exhibit A.

**MARON MARVEL BRADLEY
& ANDERSON, P.A.**

/s/ Paul A. Bradley

Paul A. Bradley (DE Bar ID #2156)
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Attorney for Defendant
Fisher Control International, LLC

EXHIBIT A

	SUPERSEDEAS BOND	
	COURT OF	Bond No. <u>105144303</u>
<u>IN THE UNITED STATES DISTRICT</u> <u>COUNTY OF</u>		<u>STATE OF</u> <u>DELAWARE</u>
<p>NORTHEAST CONTROLS, INC. and ST. PAUL MERCURY INSURANCE COMPANY,) PLAINTIFFS,) CASE NO. <u>06-412-SLR</u> v.) FISHER CONTROLS INTERNATIONAL, LLC,) DEFENDANT.)</p>		
<p>KNOW ALL MEN BY THESE PRESENTS, That we, Fisher Controls International, LLC as Principal, and <u>Travelers Casualty and Surety Company of America</u> a <u>Connecticut</u> corporation, as Surety are held and firmly bound unto <u>Northeast Controls, Inc. and St. Paul</u> <u>Mercury Insurance Company</u> in the amount of One Million Four Hundred Four Thousand Two Hundred Seventy-seven Dollars And Seventy Cents Dollars (\$ <u>1,404,277.70</u>) for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.</p>		
<p>WHEREAS, the said Fisher Controls International, LLC has petitioned the United States Court of Appeals for the Third Circuit for the State of for an appeal to said court of an action previously decided in United States District Court for the District of Delaware court, wherein the said Fisher Controls International, LLC is Defendant, and being numbered <u>08-1357 & 08-1820 (Consolidated)</u> on the docket thereof;</p>		
<p>NOW THEREFORE, the condition of this obligation is such that if the said Fisher Controls International, LLC shall pay all costs, disbursements and judgements incurred by reason of the said appeal proceeding, then this obligation shall be null and void and released, otherwise to remain in full force and effect, provided however, the maximum liability of the surety shall not exceed the penal sum of One Million Four Hundred Four Thousand Two Hundred Seventy-seven Dollars And Seventy Cents Dollars (\$ <u>1,404,277.70</u>). _____. IN WITNESS WHEREOF, Fisher Controls International, LLC as Principal and <u>Travelers Casualty and Surety Company of America</u>, as Surety, have hereunto set our hands this 10th day of July, 2008. ATTEST/WITNESS By: <u>Patricia L. Kuehn</u> Fisher Controls International, LLC Principal By: <u>Lyle Wilkins</u> Secretary Travelers Casualty and Surety Company of America By: <u>Sandra L. Ham</u> Sandra L. Ham Attorney-in-Fact</p>		

ACKNOWLEDGMENT BY SURETY

STATE
OF Missouri }
City of St. Louis } ss.

On this 10th day of July, 2008, before me personally appeared Sandra L. Ham, known to me to be the Attorney-in-Fact of Travelers Casualty and Surety Company of America

, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.

My Commission Expires: October 6, 2009

(Seal)

HEIDI A. NOTHEISEN
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI, ST. LOUIS CITY
MY COMMISSION EXPIRES 10-06-09
COMMISSION #05514582

Heidi A. Ettheisen

Heidi A. Notheisen
Notary Public in the State of Missouri
City of St. Louis

TRAVELERS**POWER OF ATTORNEY**

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 Seaboard Surety Company
 St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
 St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company

Attorney-In Fact No. 219063

Certificate No. 002359947

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Pamela A. Beelman, Heidi A. Notheisen, Cynthia L. Hanak, Debra C. Schneider, JoAnn R. Frank, Karen L. Roider, and Sandra L. Ham

of the City of St. Louis, State of Missouri, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 6th day of May, 2008.

Farmington Casualty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.
 Seaboard Surety Company
 St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
 St. Paul Mercury Insurance Company
 Travelers Casualty and Surety Company
 Travelers Casualty and Surety Company of America
 United States Fidelity and Guaranty Company



State of Connecticut
 City of Hartford ss.

By:

George W. Thompson, Senior Vice President

On this the 6th day of May, 2008, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
 My Commission expires the 30th day of June, 2011.



Marie C. Tetreault

Marie C. Tetreault, Notary Public

EXHIBIT B

Bond Interest Calculation

								1,207,833.50
--	--	--	--	--	--	--	--	--------------

Principal Beg	% rate	Daily Rate	Payment	# of dates	Int	Balance	Payment Received	
\$ 1,207,833.50	9% 301.9584	-		6/29/2008 3/13/2008	623	188,120.07	1,395,953.57	

Post Judgement Interest

								1,395,953.57
--	--	--	--	--	--	--	--	--------------

Principal Beg	% rate	Daily Rate	Payment	# of dates	Int	Balance	Payment Received	
\$ 1,395,953.57	1.66% 64.36897	-		3/13/2008 7/7/2008	116	7,466.80	1,403,420.37	

Fees

600

Balance

1,404,020.37

EXHIBIT C

Paul A. Bradley

From: Wagner, Thomas P. [TPWagner@MDWCG.com]
Sent: Thursday, August 28, 2008 6:04 PM
To: Paul A. Bradley
Subject: Re: Northeast v. Fisher

The current bond is barely enough to cover the judgment and prejudgment interest. We do not know how long the case will be on appeal. It has already been pending for six months, and we don't even have a briefing schedule yet.

I remind you that we were willing to avoid the whole issue of a bond by merely eliminating the possibility of a pointless appeal to the SCUS, but your client would not agree.

I am in Florida. If you want to discuss this with me, try my cell at 215 901 4308. Thanks.

From: Paul A. Bradley
To: Wagner, Thomas P.
Sent: Thu Aug 28 17:48:10 2008
Subject: Re: Northeast v. Fisher

Can you explain the basis for that?

Paul A. Bradley
Maron Marvel Bradley & Anderson, P.A.
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Wilmington, DE 19801
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From: Wagner, Thomas P.
To: Paul A. Bradley
Sent: Thu Aug 28 17:52:43 2008
Subject: Re: Northeast v. Fisher

Paul:

Our position is that your bond is not large enough. It should be 20% larger to allow for all interest, pre- and post-judgment.

Thank you.

----- Original Message -----

From: Paul A. Bradley <PAB@maronmarvel.com>
To: Wagner, Thomas P.
Sent: Wed Aug 20 16:11:45 2008
Subject: Northeast v. Fisher

Tom: hi. Where do we stand on the bond issue? Thanks.

Paul A. Bradley
Maron Marvel Bradley & Anderson, P.A.
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Wilmington, DE 19801

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NORTHEAST CONTROLS, INC. and)
ST. PAUL MERCURY INSURANCE)
COMPANY,)
Plaintiffs,) Civ. A. No.: 06-412 SLR
v.)
FISHER CONTROLS INTERNATIONAL, LLC,)
Defendants.)

ORDER

AND NOW, this ____ day of _____, 2008 having considered the Defendant's Motion for Approval of the Form of Bond with Surety;

IT IS HEREBY ORDERED, that, Travelers Casualty and Surety Company of America is hereby approved, pursuant to Fed. R. Civ. P. 62(d), as surety of this bond, and the form and sufficiency of the bond are also hereby approved. Further, any execution on the judgment is stayed pending the decision and mandate of the United States Court of Appeals for the Third Circuit. The original Bond shall be filed with the Clerk.

The Honorable Susan L. Robinson

CERTIFICATE OF SERVICE

I, Paul A. Bradley, Esquire, hereby certify that, on September 2, 2008, I caused a true and correct copy of the following documents to be served upon counsel of record via electronic filing and hand delivery:

1. Defendant Fisher Controls International, LLC's Motion for Approval of the Form of Bond with Surety; and
2. Defendant Fisher Controls International, LLC's Notice of Waiver of Right to File Opening Brief.

**MARON MARVEL BRADLEY
& ANDERSON, P.A.**

/s/ Paul A. Bradley

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